

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of)	MM Docket No. 93-158
)	
Amendment of Section 72.202(b),)	RM-8239
Table of Allotments)	RM-8317
FM Broadcast Stations)	
Hazlehurst, Utica and Vicksburg, Mississippi)	

To: The Commission

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT
AND SETTLEMENT AGREEMENT**

Flinn Broadcasting Corporation (hereinafter "FBC")¹ and Donald B. Brady ("Brady") hereby respectfully request, pursuant to Section 311(c)(2) of the Communications Act of 1934 (as amended) and Section 1.420(j) of the Commission's Rules and Regulations, that this "Joint Request for Approval of Settlement Agreement and Settlement Agreement" (hereinafter referred to as "Settlement Agreement") be approved, that the Application for Review filed by Brady on April 1, 1996 be dismissed with prejudice and that the Commission's rulings in its **Memorandum Opinion and Order** (DA 96-175, released February 22, 1996) be affirmed. In support of this request, the following is respectfully submitted for the Federal Communications Commission's consideration.

No. of Copies rec'd 014
List A B C D E

¹ Flinn Broadcasting Corporation is the successor-in-interest to Willis Broadcasting Corporation by virtue of FBC's acquisition of WJXN (FM), Utica, Mississippi.

1. FBC (as successor-in-interest to Willis Broadcasting Corporation) is the licensee of WJXN (FM), Utica, Mississippi and the Petitioner in the subject proceeding. Brady currently has pending an Application for Review seeking reversal of the Commission's rulings in **Memorandum Opinion and Order**, DA 96-175, released February 22, 1996.

2. The parties believe that the public interest will best be served if the Application for Review is dismissed since it will conserve the resources of both parties, will terminate a long-pending matter before Federal Communications Commission and will hasten inauguration of an enhanced broadcast service to Utica, Mississippi.

3. In executing the subject Settlement Agreement, each of the undersigned signatories represent and warrant that he has the full right and legal authority to execute and deliver the Settlement Agreement on behalf of the subject party and that, with the intention of being legally bound hereby, they agree as follows:

A. SETTLEMENT AGREEMENT

4. Subject to the approval of this Agreement by the Federal Communications Commission, Brady shall dismiss with prejudice his currently-pending Application for Review.

5. In consideration for the dismissal of Brady's Application for Review with prejudice, FBC agrees to pay Brady the sum of Eight Thousand Dollars (\$8,000.00), said sum representing reimbursement of a portion of the reasonable and prudent out-of-pocket expenses incurred by Brady in filing the subject Application for Review. The

above-referenced sum of \$8,000.00 shall be paid to "Haley, Bader & Potts, P.L.C.", as agent for Brady, by certified check or wire transfer of immediately available funds within five (5) business days of a "final order" of (a) the Commission's dismissal with prejudice of the Application for Review filed by Brady on April 1, 1996 and (b) the grant of WJXN's upgrade pursuant to **Memorandum Opinion and Order** (DA 96-175, released February 22, 1996).

6. In executing this Settlement Agreement, each undersigned party affirmatively represents to the Federal Communications Commission, as follows:

(a) In exchange for withdrawing his expression of interest/Application for Review, Brady has not received and will not receive any money or other consideration in excess of his legitimate and prudent expenses.

(b) Neither FBC nor its principals has paid or will pay any money or other consideration in excess of the legitimate and prudent expenses of Brady in exchange for Brady's withdrawal of his expression of interest/Application for Review.

(c) This Settlement Agreement contains all the terms of the proposed agreement between the parties.

(d) Attachment A hereto consists of an itemized accounting of the expenses for which Brady seeks reimbursement.

7. In executing the subject Settlement Agreement, each of the above-referenced parties affirm, under penalty of perjury, that: (a) their respective proposals were not filed with the Federal Communications Commission for the purpose of reaching or carrying out a settlement; (b) the Settlement Agreement fully discloses all terms of their settlement; (c) the parties believe the Settlement Agreement will serve the public interest by conserving the resources of both parties, terminating a long-pending matter

before the Federal Communications Commission and hastening inauguration of an enhanced broadcast service to Utica, Mississippi; and, (d) they believe that they have complied with the requirements of Section 311(c)(2) of the Communications Act of 1934, as amended, and Sections 1.16 and 1.420(j) of the Federal Communications Commission's Rules and Regulations.

8. Each party shall fully cooperate with the other party and the Federal Communications Commission by expeditiously and completely providing the other party and/or the Federal Communications Commission with any additional information requested. Should the Federal Communications Commission refuse to approve this Settlement Agreement, the parties shall examine the objections of the Federal Communications Commission and will timely make individual and joint good faith efforts to resolve all objections in a manner which reflects as closely as possible the intentions of the parties as set forth herein. In the event that any party refuses to cooperate in seeking to effectuate this Settlement Agreement, the other party (singularly or collectively) shall have available to it all remedies to which it is entitled under law or at equity, and the rules, regulations and policies of the Federal Communications Commission, including any and all rights to the remedy of specific performance. Notwithstanding other rights reserved to the parties pursuant to this Settlement Agreement, the parties agree that the failure of any party to perform its obligations and covenants under this Settlement Agreement is one for which there is no adequate remedy at law, and either party may seek injunctive relief and/or specific performance requiring the other party to perform its obligations hereunder. Any party successful in

prosecuting a suit to enforce the terms of this Settlement Agreement shall be entitled to receive from the non-prevailing party the award of reasonable attorney's fees.

B. POST-GRANT ISSUES

9. Within five business days of "finality" (as that term is defined in the FCC's Rules and Regulations) of the Order or Orders (a) dismissing the Application for Review of Brady (i.e., with terms which are not materially adverse to FBC) and (b) affirming the Commission's rulings in its **Memorandum Opinion and Order** (DA 96-175, released February 22, 1996), the settlement payment set forth hereinabove shall be paid by FBC to Brady.

C. MISCELLANEOUS

10. Any notice required hereunder shall be in writing and any payment, notice or other communication shall be deemed given when delivered personally, mailed by certified mail (postage prepaid, return receipt requested) or forwarded by overnight delivery (i.e., by Federal Express, United Parcel Service or USPS Express Mail) to the individuals identified on the signature page to the Settlement Agreement.

11. This Settlement Agreement embodies the entire understandings by and between the parties hereto and there are no other agreements, representations, warranties, or understandings, oral or written, between or between them with respect to the subject matter hereof. No alteration, modification or change of this Settlement Agreement shall be valid unless by like written instrument.

12. The event that any of the provisions contained in this Settlement Agreement is held to be invalid, illegal or unenforceable shall not affect any other provision hereof, and this Settlement Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

13. This Settlement Agreement is the product of negotiation and preparation by and between the parties, and their respective attorneys. Accordingly, the parties hereto acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one party or another (or the attorneys for one party or another) and shall be construed accordingly.

14. This Settlement Agreement may be signed by the parties in any number of counterparts with the same effect as if the signature of each such counterpart were upon the same instrument, and each executed copy shall be an original for all purposes without accounting for the other copies. Copied and/or faxed signature pages shall be deemed originals for the purposes of this Settlement Agreement (i.e., with the underlying original signature page to be supplied to the FCC upon request). This Settlement Agreement shall be effective as of the date on which the executed counterparts are exchanged by the parties.

15. This Settlement Agreement shall be construed under the laws of the State of Mississippi, the Communications Act of 1934 (as amended) and the Rules and Regulations of the Federal Communications Commission.

E. CONCLUSION

The parties, by their undersigned principals, respectfully submit that approval of the subject Settlement Agreement is in the public interest and, as such, for the reasons set forth hereinabove, respectfully request pursuant to Section 311(c)(2) of the Communications Act of 1934 (as amended) that (a) the Application for Review filed by Brady dated April 1, 1996 be dismissed (i.e., with terms which are not materially adverse to FBC) and (b) the Commission's rulings in its **Memorandum Opinion and Order** (DA 96-175, released February 22, 1996) be affirmed.

[THE NEXT PAGE IS THE SIGNATURE PAGE ONLY]

IN WITNESS WHEREOF, the parties have duly executed this Settlement Agreement in counterparts, with each deemed an original, effective as of the date set forth in Section 14.

FLINN BROADCASTING CORPORATION

Date: 3/5/99

By: George S. Flinn, Jr.
George S. Flinn, Jr., as its President
188 South Bellevue
Suite 222
Memphis, TN 38104
(901) 726-8970

DONALD B. BRADY

Date: 3/3/99

By: Donald B. Brady
Donald B. Brady
204 Duncan Avenue
Jackson, MS 39202
(601) 355-1240

ATTACHMENT A

DECLARATION

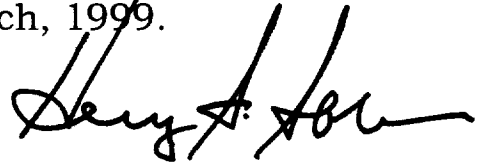
Henry A. Solomon declares and states as follows:

1. I am a member of the law firm of Haley Bader & Potts P.L.C. (the "Firm") with offices at 4350 North Fairfax Drive, Arlington, Virginia 22203-1633, and a member of the Virginia and District of Columbia Bars. I regularly practice before the Federal Communications Commission.

2. Since approximately 1993, this firm has provided legal services to Mr. Donald B. Brady in connection with the proceeding (MM Docket No. 93-158) described in a Joint Request for Approval of Settlement and Settlement Agreement, which is being filed concurrently herewith on behalf of Mr. Brady and Finn Broadcasting Corporation.

3. The bills which the firm has rendered to Mr. Brady reflecting the cost of legal services and reimbursable expenses in connection with the subject proceeding exceed the settlement amount of eight thousand dollars (\$8,000.00).

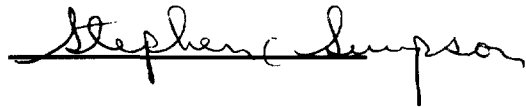
I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of March, 1999.



Certificate of Service

I hereby certify that a copy of the foregoing document was this 8th day of March, 1999 sent by First Class U.S. mail, postage prepaid, to the following:

Henry A. Solomon, Esq.
Haley Bader & Potts, P.L.C.
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633

A handwritten signature in black ink, reading "Stephen C. Simpson". The signature is written in a cursive style with a horizontal line underneath the name.